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USTR FOR RVARGO AND AMELITO  
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SUBJECT: GOP WINS BIG AGAINST CHINESE-OWNED PANAMA PORTS

Classified By: Classified by Ambassador William A. Eaton for reasons 1.  
4 (b and d)

11. (C) Summary: The GOP and Panama Ports Company (PPC) agreed on September 8 to reverse a highly questioned move by the former Moscoso administration in 2002 that freed PPC from its contractual obligations to pay \$22.2 million annually plus a variable annual payment of 10% of its gross annual income to the GOP. Moscoso's action would have cost Panama more than \$1.3 billion in lost revenues during the remaining 45 years of PPC's concession. Spearheaded by Minister of Trade & Industry Alejandro Ferrer, the GOP overcame PPC's hardball tactics and forced PPC (owned by Hong Kong-based Hutchison Port Holdings) to drop \$40 million in counter claims and to pay \$102 million in back rent, avoiding a prolonged legal fight. Whatever the reason for PPC's agreement to settle, the GOP showed its clear readiness to go the mat with the world's leading port operator and a powerful Chinese-owned company. Looking ahead to the GOP's future solicitation on a proposed \$300 million megaport at the Pacific end of the Panama Canal, Ferrer told the Ambassador September 19 that the Chinese already have enough ports here.8 End summary.

PPC's 1997 Deal for Ports at Both Ends of the Panama Canal  
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12. (U) In January 1997, PPC signed a 25-50 year concession to develop terminals at the GOP's previously existing Balboa and Cristobal ports at the Pacific and Atlantic ends, respectively, of the Canal. PPC agreed to pay the GOP \$22.2 million annually in fixed rent as well as 10% of gross revenues. Among other financial considerations, PPC also agreed to pay the GOP \$10 million for all existing equipment currently at the port facilities, and give the GOP a 10% stake in PPC. Through this deal, PPC took control of more than \$700 million worth of docks, land & portico8 cranes, equipment, buildings, and other assets.

13. (SBU) As PPC is a subsidiary of Hong Kong's Hutchison International Port Holdings, its winning bid sparked worries over potential Chinese influence in the Canal's operations. Hutchison Port Holdings, itself a wholly-owned subsidiary of Hutchison Whampoa, Limited (HWL), is the world's leading port developer and operator, with 236 berths in some 40 ports around the world, along with a number of transportation-related service companies. The 1996 bidding process was marred by controversy, as one competitor, Cooper T. Smith Kawasaki Shipping Partnership, complained that the GOP had awarded them a ports privatization contract on two occasions, only to take it away each time in favor of other competitors, Bechtel and Hutchinson Port Holdings.

14. (U) The GOP sought to resolve the controversy by using offers of fixed rent as the determining factor to award the concession. Bechtel dropped out after falling short with an offer of \$5 million per year. Kawasaki's \$10 million per year bid also fell far short of Hutchison Port Holdings, winning \$22.2 million offer. Complaints from Bechtel and others about irregularities in the bidding process sparked concerns in Washington that increased Chinese influence over the Canal could enable China to deny passage to U.S. ships.

15. (SBU) In 1996, many believed that HWL's primary interest in bidding on the Panamanian ports was to establish a Pacific Ocean hub for its shipping interests. Two major sites, Balboa and the former U.S. naval base at Rodman, are worthy of investment necessary to develop a major port on the Pacific side of the Canal. HWL obtained the rights to Balboa on the east bank, and the right of first refusal to the Rodman facilities. At the GOP's insistence, HWL also agreed to develop a port on the Caribbean side at Cristobal to obtain the Balboa concession.

Moscoso Let PPC Off Hook for \$22 Million in Annual Rent  
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16. (U) Each port concessionaire in Panama has an equiparacion8 (&make whole8) clause in its contract with the GOP, ensuring that each is afforded the same benefits under Panamanian law, i.e., to maintain a level playing field for port operators. In 2001, PPC sought to modify its

concession agreement, claiming, inter alia, that it was paying more per TEU movement than Manzanillo International Terminal (MIT) and the Colon Container Terminal (CCT). In a highly controversial move in 2002, the Moscoso administration repealed two clauses in PPC's port contract, effectively freeing PPC from its \$22.2 million in annual fixed rent and other payments, representing about \$1.34 billion over the remaining 45 years of the concession.

GOP Reverses Moscoso Action ) PPC Will Pay \$102 Million

17. (U) As part of his 2004 campaign, President Torrijos promised to overturn Moscoso's 2002 deal with PPC. Following months of difficult negotiations that began in September 2004, the two sides appeared far apart as recently as the beginning of September, particularly as PPC pressed for some \$40 million in claims against the GOP for non-performance of certain aspects of the original contract. As the GOP's lead negotiator, Ferrer was unyielding and on September 8, the GOP and PPC announced a surprise breakthrough. PPC agreed to pay \$102 million in back rent and committed to invest some \$1 billion in facility upgrades at Balboa and Cristobal between 2008 and 2015. PPC expects this will create 5,000 jobs in Cristobal and 7,500 in Balboa, and increase annual TEU movements from 1.5 to 4 million.

18. (SBU) Ferrer told the Ambassador on Sept. 19 that he held firm because he was fighting for a just outcome for the Panamanian people.<sup>8</sup> He said he thwarted PPC's hardball tactics, including blackmail, by telling PPC that &you've got nothing on me, but you don't want me to come out with what I have on you!<sup>8</sup> In the end, Ferrer said, he could not have prevailed without President Torrijos, strong backing, as the president twice rejected PPC's telephone calls aimed at going over Ferrer's head during the negotiations. He believed PPC ultimately capitulated because it saw little to gain from a protracted legal battle. Second Vice President & Maritime Authority Director Ruben Arosemena told the Ambassador on Sept. 15 that he believed PPC settled because it was falling behind other MIT and CCT in carrying out their projects.

Comment

19. (C) The GOP's victory over PPC gave an embattled Torrijos Administration a sorely needed win, as it continues to struggle with its fiscal and social security reform agendas. President Torrijos expressed great pride in the PPC outcome during the Ambassador's September 9 presentation of credentials. Whatever the reason for PPC's decision, the GOP showed its clear readiness to go to the mat ) and prevail ) in its battle with a powerful Chinese-owned company. Looking ahead to the GOP's future solicitation on a proposed \$300 million &megaport<sup>8</sup> at the Pacific end of the Panama Canal, Ferrer told the Ambassador that the &Chinese already have enough ports here.<sup>8</sup>

EATON